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SUBJECT: Consular Convention Negotiations

REF: Your Airgram No. A-717, February 23, 1962

TO: The American Embassy, TOKYO

The Department has given careful consideration to the question of a most-favored-nation clause in the Consular Convention with Japan that would apply only to any future consular conventions either nation might enter into with third countries. While such a provision might solve some aspects of the current estates clause problems, it would not overcome a number of other objections to most-favored nation provisions in consular conventions. These objections have caused the Department to establish a firm policy opposing the most-favored-nation clause in future consular conventions. This policy is based on the following considerations which are discussed in greater detail below:

(1) With respect to the consular activities, particularly including the estates functions, unless present restrictive thinking changes there is no indication that any future consular convention at variance with the present Articles 18-20 will ever be ratified. Hence, a forward looking most-favored-nation clause would have no real substance, at least vis-a-vis more favorable estates treatment. The other substantive consular functions such as notarials and shipping, are of little controversy, and are generally uniform and routine. It is unlikely that there will be any significant change in these matters in the future.

(2) While the Department is not as concerned about privileges and immunities aspects of the most-favored-nation clause, the Japanese negotiators should be aware of the forthcoming negotiation at Vienna, in March of 1963, under the auspices of the United Nations, of the multilateral convention on consular intercourse and immunities. It is believed that if the 1961 Vienna Convention on

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Diplomatic Relations may be a guide, it is likely the standard for privileges and immunities for consular officers and employees established in the forthcoming Vienna negotiations will prevail thereafter for most if not all states. It is doubtful whether future United States consular conventions would be significantly at variance from whatever privileges and immunities may be agreed upon at Vienna next year.

(3) In terms of its worldwide consular relations, the Department believes that a most-favored-nation clause is, on balance, likely to be of greater benefit to other signatories than to the United States. For the background of the Embassy negotiators, a 1941 precedent in the negotiation, albeit fruitlessly, of a consular agreement with the Union of Soviet Socialist Republics, might be recalled. (See Foreign Relations of the United States, 1942, Europe, Vol. III, p. 449.) In that case, it was the Union of Soviet Socialist Republics desire to utilize a most-favored-nation provision. The United States Government refused, on the ground that most-favored-nation treatment in the Union of Soviet Socialist Republics might well be meaningless, in that there were no referenced treaties to provide treatment which would be as favorable or otherwise comparable with the treatment the United States would be obliged to provide to the Union of Soviet Socialist Republics, by reason of the most-favored-nation reference to its own agreements. While this argument applies with greatest force to a retroactive most-favored-nation clause, a prospective clause would not entirely remove this concern.

(4) The vagueness argument against the most-favored-nation provision is still not altered by the Japanese proposed change. While admittedly for the moment this would not be a problem, some 20 or 30 years from now might well see some dozen or more consular conventions ratified.

The Department's instructions will follow shortly concerning the relation of Ryukyuans to the Convention.

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